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In re Application of :
John D. Cameron and Tobin Gaedke :
Application No. 08/986,287 :
Filed: December 6, 1997 : ON PETITION
Title of Invention: :
THERMOCHROMIC BAR CODE :
:

FEB 09 2005

OFFICE OF PETITIONS

This is a decision on the Petition Under 37 CFR § 1.182, filed November 24, 2004, to allow inventor Gaedke to file a Power of Attorney and Petition and Request for Continued Examination ("RCE"), in the above-identified application.

Background

Inventor Gaedke files the instant petition to appoint a power of attorney to the law firm of Akin Gump Strauss Hauer & Feld, L.L.P. ("Akin Gump"), and to file a petition and RCE in the above-identified application. Inventor Gaedke asserts that the attorney of record for this application has refused to file an extension-of-time and RCE in this application on instructions from inventor Cameron. In support of this assertion, inventor Gaedke, by and through counsel, files a copy of a letter from attorney of record to Akin Gump stating that "inventor Gaedke and his Assignees are not responding to the outstanding Office Action for this application." Petition Exhibit A. The result of said inaction is the abandonment of the application. Inventor Gaedke further asserts that Inventor Cameron has filed a continuation application claiming priority to the above application, which names inventor Cameron as the sole inventor.

Inventor Gaedke seeks "to maintain [the above-identified] application in a pending state." Petition at p.2.

The Manual of Patent Examining Procedure ("MPEP"), § 402.10, Appointment/Revocation by Less Than All Applicants or Owners, provides

Papers giving or revoking a power of attorney in an application generally require signature by all the applicants or owners of the application. Papers revoking a power of attorney in an application (or giving a power of attorney) will not be accepted by the Office when signed by less than all of the applicants or owners of the application unless they are accompanied by a petition and fee under 37 CFR 1.182 giving good and sufficient reasons as to why such papers should be accepted. The petition should be directed to the Office of Petitions. The acceptance of

such papers by petition under 37 CFR 1.182 will result in more than one attorney, agent, applicant, or owner prosecuting the application at the same time.

Therefore, each of these parties must sign all subsequent replies submitted to the Office. See *In re Goldstein*, 16 USPQ2d 1963 (Dep. Assist. Comm'r Pat. 1988). In an application filed under 37 CFR 1.47(a), an assignee of the entire interest of the available inventors who have signed the declaration may appoint or revoke a power of attorney without a petition under 37 CFR 1.182. See MPEP § 402.07. However, in applications accepted under 37 CFR 1.47, such a petition under 37 CFR 1.182 submitted by a previously nonsigning inventor who has now joined in the application will not be granted. See MPEP § 409.03(i). Upon accepting papers appointing and/or revoking a power of attorney that are signed by less than all of the applicants or owners, the Office will indicate to applicants who must sign subsequent replies. An indication will be placed on the file wrapper as to the number of signatures necessary for accepting subsequent replies and the paper number(s) where the split powers of attorney appear. Dual correspondence will still not be permitted.

Accordingly, when the acceptance of such papers results in an attorney or agent and at least one applicant or owner prosecuting the application, correspondence will be mailed to the attorney or agent. When the acceptance of such papers results in more than one attorney or agent prosecuting the application, the correspondence address will continue to be that of the attorney or agent first named in the application, unless all parties agree. Each attorney or agent signing subsequent papers must indicate whom he or she represents.

The following are examples of who must sign replies when there is more than one person responsible for prosecuting the application:

(A) If coinventor A has given a power of attorney and coinventor B has not, replies must be signed by the attorney of A and by coinventor B.

(B) ***If coinventors A and B have each appointed their own attorney, replies must be signed by both attorneys.***

As noted *supra*, papers granting power of attorney signed by less than all of the inventors will be accepted by the Office where they are accompanied by a petition under 37 CFR 1.182 giving good and sufficient reasons as to why such papers should be accepted. Once accepted, any replies to this Office must be signed by both attorneys.

In this instance, inventor Gaedke seeks to grant power of attorney based upon inventor Cameron's express refusal to prosecute the above-identified application. However, inventor Cameron's refusal to prosecute this application militates against the granting of this petition because "any replies to this Office must be signed by both attorneys." *Id.*

Applicant files the instant petition along with a "reply to this Office", to wit: a Request for Extension of Time and Request for Continued Examination ("RCE"). The reply, however, is filed *sua sponte*, sans the signature of inventor Cameron's attorney. The reply, therefore, will not be accepted.

Alternative venue

In view inventor Cameron's refusal to prosecute the application, this Office would be willing to consider reviving this application for purposes of continuity, to allow inventor Gaedke to file a continuing application claiming priority to the this application for the claims that are attributable to inventor Gaedke.

The petition is dismissed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3232.


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Attorney/Advisor
Office of Petitions